

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-268-C - ORDER NO. 2003-748
DECEMBER 31, 2003

IN RE:	Application of Esodus Communications, Inc.)	ORDER GRANTING
	d/b/a INSTATONE for a Certificate of Public)	CERTIFICATE
	Convenience and Necessity to Provide Local)	
	Exchange and Interexchange)	
	Telecommunications Services and for)	
	Flexible Regulation and Modified Alternative)	
	Regulation)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Esodus Communications, Inc. d/b/a INSTATONE ("Esodus" or the "Applicant" or the "Company") for authority to provide resold local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business service offerings in accordance with the principles and procedures approved for AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and as later modified by Order No. 2001-997 in Docket No. 2000-407-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2002) and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Esodus provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Esodus agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Esodus provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached hereto as Order Exhibit 1.

A hearing was commenced on December 3, 2003, at 2:30 p.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided.

Esodus was represented by Bonnie Shealy, Esquire. Michael Servos, President, Secretary, and Director of the Company, appeared and testified on behalf of Esodus. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

Mr. Servos presented testimony to demonstrate the Company's financial, managerial, and technical ability to provide the telecommunications services for which authority is sought in South Carolina. The sole witness also presented testimony regarding his background and experience in business and telecommunications as well as that of the other executives of Esodus. According to his testimony, Mr. Servos studied for two years at the RCA Institute in New York after immigrating to this country in 1968. Since 1974 he has been involved in the operation of numerous business interests and has been involved in the telecommunications business since 1997 when he founded Excelink Communications in Florida.

Esodus is a privately held Florida corporation owned entirely by Mr. Servos and/or his family. The Company is currently licensed to provide telecommunications services in thirteen States and the District of Columbia and has applications pending in another five states. Regarding the services the Company seeks to provide in South Carolina, the testimony reveals that Esodus proposes to provide local exchange telecommunications service via the unbundled network platform ("UNE-P") and resold interexchange telecommunications services for the direct transmission and reception of voice and data between locations throughout the State of South Carolina. The Company intends to provide service to both residential and business customers and to resell interexchange telecommunications services, including travel service, available through

toll-free access. Service is to be provided twenty-four (24) hours per day, seven (7) days per week. As Esodus will be operating as a reseller of local exchange and long distance service, the Company's traffic will be routed entirely over the network of its underlying carriers. Additionally, Esodus will rely on its facilities-based underlying carriers for the operation and maintenance of the local exchange and interexchange networks.

The testimony reveals further that Esodus will at all times provide and market services in compliance with current Commission policies. In particular, the Company is familiar with Commission Order No. 93-462 regarding resale of intraLATA telecommunications services and will attempt to comply with the terms of that Order in every respect possible. On behalf of Esodus, Mr. Servos agreed that at all times the Company will provide interstate services in compliance with the FCC rules and regulations. Mr. Servos further testified that the Company intends to market its services primarily through newspaper and television advertising and does not intend to telemarket its services at this time.

Esodus has requested waivers of certain Commission rules and regulations. Specifically, Esodus has requested a waiver of 26 S.C. Code of Regs. Regulation 103-610 which requires the maintenance of the Company's books and records in South Carolina. The Company has also requested that it be allowed to maintain its books and records under Generally Accepted Accounting Principles (GAAP) as opposed to the Uniform System of Accounting (USOA) as the books and records have been and are maintained under GAAP. Additionally, the Company has requested a waiver of the requirement to publish and distribute a local telephone directory.

Esodus's customer service representatives are available to assist the Company's customers and to promptly respond to all customer inquiries. The Company's toll free number (1-800-REMINDER) and address will be printed on customers' monthly billing statement. Mr. Servos testified further that the Company's customer service representatives are prepared to respond to a broad range of service matters, including inquiries regarding the types of services offered by Esodus and the rates associated with the services; monthly billing statements; problems or concerns pertaining to a customer's current service; and general service matters.

Mr. Servos testified that the residents of South Carolina will benefit from Esodus's service and presence in South Carolina. The testimony reveals that customers in the Company's service territory will receive increased choice and heightened opportunities to obtain improved technology in their homes and businesses. Further, Mr. Servos opined that the granting of the certificate of authority to provide local exchange service will offer increased efficiency to the State's telecommunications infrastructure through greater reliability of services and an increase in competitive choices. The testimony reveals the Company's application to provide telecommunication services in other jurisdictions has never been denied, and the Company agrees to abide by and comply with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Esodus is organized as a corporation under the laws of the State of Florida and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Esodus is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. Esodus has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that Esodus's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2002).

5. The Commission finds that Esodus will support universally available telephone service at affordable rates.

6. The Commission finds that Esodus will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by Esodus "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2002).

8. We find that the issuance of the authority requested by Esodus is in the best interests of the citizens of the State of South Carolina.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Esodus to provide competitive intrastate resold and non-facilities-based non-rural local exchange service in South Carolina. The terms of the Stipulation between Esodus and the SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation. In addition, Esodus is granted authority to provide resold and non-facilities-based intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. Esodus shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Esodus's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Esodus's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Esodus's local

exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of Esodus which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Esodus, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an

investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Esodus also.

4. With regard to the interexchange residential service offerings of Esodus, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. Esodus shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. Esodus shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

6. If it has not already done so by the date of issuance of this Order, Esodus shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order, shall be consistent with the Commission's Rules and Regulations, and shall comport with the law of the State of South Carolina.

7. Esodus is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's offering of interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. Esodus shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Esodus changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, Esodus shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as

adopted by Order No. 93-462 and more fully described in paragraph four of the Stipulation and Appendix B approved by Order No. 93-462.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Esodus shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located at the Commission’s website at www.psc.state.sc.us/reference/forms.asp to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. Esodus shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In

recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Esodus to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing voice or dial-tone services within South Carolina, Esodus shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. Esodus shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, Esodus shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission’s requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission’s website at

www.psc.state.sc.us/reference/forms.asp . The title of this form is “Annual Report for CLECs” and/or “Annual Report for Interexchange Companies.” The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled “Gross Receipts Form for Utility Companies” and may also be found on the Commission’s website at www.psc.state.sc.us/reference/forms.asp .

16. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission’s website at www.psc.state.sc.us/reference/forms.asp.

17. Pursuant to the Commission's regulations, Esodus shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report may be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp. These "CLEC Service Quality Quarterly Reports" are required to be filed within 30 days of the end of each calendar quarter.

18. For good cause shown, Esodus is granted a waiver of the requirement under S.C. Code Ann. Regs. Reg. 103-610 that it be required to maintain its books and records in South Carolina. The Company shall maintain such records at its corporate headquarters in Florida and shall, at its own expense, make its records and books available for inspection by the Commission or its staff at any time upon request.


19. For good cause shown, Esodus is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts method.

20. For good cause shown, Esodus is granted a waiver of the requirements that the Company publish and distribute a directory under S.C. Code Ann. Reg. 103-631 and that it file service area maps with the Commission. Esodus is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.

21. This Order shall be effective on the date of issuance.

22. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Deputy Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2003-268-C

Re: Application of Esodus Communications, Inc.,)
d/b/a INSTATONE for a Certificate of Public)
Convenience and Necessity to Provide Resold)
Local Exchange Telecommunications Services)
and to Provide Resold Interexchange Telecom-)
munications Services in the State of South)
Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Esodus Communications, Inc. d/b/a INSTATONE ("Esodus") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Esodus's Application. SCTC and Esodus stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Esodus, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Esodus stipulates and agrees that any Certificate which may be granted will authorize Esodus to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Esodus stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Esodus stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until Esodus provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Esodus acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Esodus stipulates and agrees that, if Esodus gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Esodus will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Esodus acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

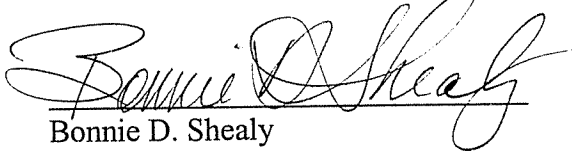
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Esodus, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Esodus agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Esodus hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 4th day of November, 2003.

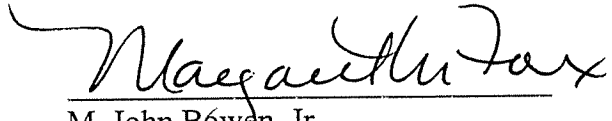
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ATTACHMENT A

South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company